

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

v.

DOUGLAS E. OERLY,

Appellant.

DOCKET NUMBER WD76579

Date: October 28, 2014

Appeal from:
Boone County Circuit Court
The Honorable Larry A. Bryson, Judge

Appellate Judges:
Division Two: Victor C. Howard, P.J., Alok Ahuja and Gary D. Witt, JJ.

Attorneys:
Merilee A. Crockett, Columbia, MO, for Respondent.
Ellen H. Flottman, Columbia, MO, for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

STATE OF MISSOURI

v.

DOUGLAS E. OERLY,

Respondent,

Appellant.

WD76579

Boone County

On September 21, 2012, security personnel at a Wal-Mart store in Columbia stopped Douglas Oerly in a store vestibule as he was attempting to leave the store with merchandise for which he had not paid. Following a bench trial, Oerly was convicted of the Class A misdemeanor of stealing in the Circuit Court of Boone County. Oerly appeals, arguing that the circuit court erred in excluding evidence concerning medical treatment he received on the day following the theft.

AFFIRMED.

Division Two holds:

As a preliminary matter, we must determine whether we have jurisdiction over Oerly's appeal. In this case, the circuit court entered its judgment convicting and sentencing Oerly on the same day that the court found him guilty of stealing. By doing so, the trial court acted prematurely, because Supreme Court Rule 29.11(c) prohibits a circuit court from entering judgment in a criminal case until the expiration of the 15-day period for filing a motion for new trial.

Absent a defendant's express waiver of Rule 29.11(c)'s timing requirements prior to sentencing, this Court has held that any judgment rendered before the end of the fifteen-day period is "premature and void," and that the Court is required to dismiss an appeal from such a premature judgment, even if the defendant requests that the Court decide his appeal on the merits. See *State v. Besendorfer*, 372 S.W.3d 914, 915-16 (Mo. App. W.D. 2012). The Southern District, sitting *en banc*, recently refused to follow *Besendorfer*. The Southern District instead held that, following *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 252 (Mo. banc 2009), a judgment entered in violation of Rule 29.11(c)'s timing requirements is not "void," but is merely voidable. *State v. Jacobs*, 421 S.W.3d 507, 512 (Mo. App. S.D. 2013) (*en banc*). *Jacobs* held

that a defendant can waive the circuit court's noncompliance with Rule 29.11(c) where the defendant does not object in the trial court, or raise the issue on appeal.

Consistent with *Jacobs*, we conclude that a criminal judgment entered prematurely under Rule 29.11(c) is not "void." The concept of a "void" judgment is narrowly restricted to cases in which the trial court lacked personal or subject-matter jurisdiction, or where the judgment was entered in violation of a litigant's due process rights. The circuit court plainly had personal jurisdiction over Oerly, and Oerly was not denied due process because he was represented by counsel in the underlying proceeding, and affirmatively stated that he was prepared to proceed to sentencing on the same day as the court's finding of guilt.

The circuit court also had subject-matter jurisdiction of this case under Article V, § 14 of the Missouri Constitution, because this is a criminal case. Rule 29.11(c) does not limit the subject-matter jurisdiction granted in Article V, § 14; instead, the Rule merely limits the court's authority to act until the period for filing a new-trial motion has expired. Failure to follow Rule 29.11(c)'s timing requirements does not divest the circuit court of subject-matter jurisdiction, or render its judgment "void"; instead, the judgment may be voidable if and when a defendant challenges the court's premature entry of judgment.

Because the judgment here is not "void," but merely "voidable," we have jurisdiction to review the judgment on its merits.

Oerly challenges the trial court's exclusion of records concerning his medical treatment on the day following the theft. But those records were irrelevant, and do nothing to support Oerly's defense theory at trial: that at the time of the theft he was experiencing low blood-sugar as a result of a diabetic episode, and was unaware of the nature of his actions as a result. The excluded records suggest that, on the day after the theft, Oerly had high blood sugar, and was oriented to person and place. While the excluded records support the general proposition that Oerly had a serious diabetic condition that was not adequately controlled, the trial court permitted Oerly to testify to his long history of poorly-controlled diabetes.

Before: Division Two: Victor C. Howard, P.J., Alok Ahuja and Gary D. Witt, JJ.

Opinion by: Alok Ahuja, Judge

October 28, 2014

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